



Americans for Immigrant Justice

formerly Florida Immigrant Advocacy Center (FIAC)

April 4, 2019

VIA FIRST CLASS AND ELECTRONIC MAIL

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street SW, Stop 5009
Washington, D.C. 20536-5009
ICE-FOIA@dhs.gov

Attn: FOIA Appeals
U.S. Department of Homeland Security
245 Murray Lane SW, Mail Stop 0655
Washington, D.C. 20528-0655

Re: Freedom of Information Act Appeal – Request 2019-ICFO-28258

Dear FOIA Officer:

On January 9, 2019, Americans for Immigrant Justice (AI Justice) submitted a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et. seq.* (hereinafter the "Request") via electronic mail and First Class Mail. *See* Exhibit A. The Request pertained to disclosure of any and all records authored, prepared, received, collected and/or maintained by or transmitted to/from the U.S. Department of Homeland Security (DHS) and/or U.S. Immigration and Customs Enforcement (ICE) that describe, refer or relate ICE's documentation of its officers' considerations of the least restrictive setting for each age-out as required under 8 U.S. Code § 1232 (c)(2)(B).

More than a month later, on February 14, 2019, AI Justice received, via electronic mail, an acknowledgement notice from the ICE FOIA office confirming receipt of the Request and invoking the ten day extension. *See* Exhibit B. Since that time, we have received no other correspondence or production from ICE.

Please consider this letter an appeal of your constructive denial of the Request and a restatement of our request for a fee waiver.

When a party submits a FOIA request, the agency has 20 business days to determine whether to produce records responsive to the request. 5 U.S.C. § 552(a)(6)(A)(i). In unusual circumstances, this deadline may be extended for a maximum of ten additional business days. 5 U.S.C. § 552(a)(6)(B)(i). When an agency fails to make a determination within the time period prescribed by the FOIA, requesting parties may deem the agency's delay a denial of the FOIA request and appeal the denial. *See, e.g., Ruotolo v. Dep't of Justice*, 53 F.3d 4, 8 (2d Cir. 1995)

("[A]dministrative remedies are 'deemed exhausted' if the agency fails to comply with the 'applicable time limit' provisions of the FOIA."); *Voinche v. Fed. Bureau of Investigation*, 999 F.2d 962, 963 (5th Cir. 1993) ("If an agency has not complied within the statutory time limits of a FOIA request, the requestor shall be deemed to have exhausted his administrative remedies and [may] bring suit."). You have failed to respond to our FOIA request within the thirty days provided under the FOIA statute.

FOIA incorporates a strong presumption in favor of mandatory disclosure of requested records. *Wisconsin Project on Nuclear Arms Control v. Dep't of Commerce*, 317 F.3d 275, 279 (D.C. Cir. 2003) ("FOIA accordingly mandates a 'strong presumption in favor of disclosure.'") (quoting *Dep't of Justice v. Ray*, 502 U.S. 164, 173 (1991)). Agencies may deny a FOIA request only when the requested records fall under any of the nine exemptions listed in FOIA. 5 U.S.C. § 552(b). You have not responded to our FOIA request and thus have not applied any of the statutory exemptions to withhold the records we requested. Accordingly, we are entitled to the requested records.

In the event that we do not receive the required response and determination in the applicable time period, we will pursue appropriate legal action to enforce our rights under the FOIA.

Thank you in advance for your response to this request within twenty working days, pursuant to FOIA requirements. *See* 5 U.S.C. § 552(a)(6)(A)(ii). Should you have any questions or concerns, please feel free to contact me at (305) 573-1106 Ext. 1020, or via email at llehner@aijustice.org.

Sincerely,

Lisa Lehner
Senior Litigation Attorney
Americans for Immigrant Justice
6355 NW 36 Street, Suite 2201
Miami, FL 33166
305-573-1106, ext. 1020
llehner@aijustice.org

EXHIBIT

A



Americans for Immigrant Justice

formerly Florida Immigrant Advocacy Center (FIAC)

January 09, 2019

VIA FIRST CLASS AND ELECTRONIC MAIL

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street SW, Stop 5009
Washington, D.C. 20536-5009
ICE-FOIA@dhs.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Americans for Immigrant Justice (AI Justice) submits this request for information under the Freedom of Information Act, 5 U.S.C. § 552, *et. seq.* (hereinafter the "Request").

REQUEST FOR INFORMATION

AI Justice requests disclosure of any and all records¹ authored, prepared, received, collected and/or maintained by or transmitted to/from the U.S. Department of Homeland Security (DHS) and/or U.S. Immigration and Customs Enforcement (ICE)² that describe, refer or relate ICE's documentation of its officers' considerations of the least restrictive setting for each age-out as required under 8 U.S. Code § 1232 (c)(2)(B).

This Request is limited to records dated between October 1, 2018 and the present day.

¹ The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, power point, excel spreadsheet, directives, documents, data, videotapes, audiotapes, emails, faxes, files, guidance, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

² The term "ICE" as used herein refers to ICE headquarters offices, including any divisions, subdivisions or sections therein, ICE field operations offices, including any divisions, subdivisions or sections therein; ICE offices at ports of entry, including any divisions, subdivisions or sections therein; and any other ICE organizational structures and offices.

- (1) All guidelines, directives, rules, policies, procedures, memoranda, reports, correspondence, communications or other documents that relate to the custody decisions pertaining to “age outs”³ subject to the 8 U.S. Code § 1232 (c)(2)(B) within the Miami Field Office area of jurisdiction from October 1, 2018 to present.
- (2) All policies, memoranda, correspondence, and other documents related to an October 17, 2018 ICE policy requiring documentation of Title 8 U.S. Code § 1232 (c)(2)(B) decisions made by ICE regarding the manner of detention or release from detention of formerly unaccompanied minors who have turned 18 while in the custody of ORR, hereinafter referred to as “age-outs”.
- (3) All documents uploaded since October 1, 2018 to a SharePoint page created for the purpose of documenting ICE officers’ considerations of the less restrictive setting for each “age-out” within the Miami Field Office area of jurisdiction pursuant to Title 8 U.S.C. § 1232 (c)(2)(B) including the form in which age out custody decisions are made and documented.
- (4) All guidelines, directives, rules, policies, procedures, memoranda, reports, correspondence, communications or other documents that relate to the number of age outs transferred from ORR custody to ICE detention facilities within the jurisdiction of the Miami Field Office of ICE from October 1, 2018 until the present.

REQUEST FOR WAIVER OF ALL COSTS

AI Justice respectfully requests that all fees associated with this FOIA request be waived. AI Justice is entitled to a waiver of all costs because disclosure of the information requested is “. . . likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 522(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11(k) (Records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, AI Justice has the ability to widely disseminate the requested information. *See Judicial Watch v. Rossoti*, 326 F.3d 1309 (D.C. Cir. 2013) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

AI Justice protects and promotes the basic human rights of immigrants through a unique combination of free legal services, impact litigation, policy reform and public education at the local, state and national levels. Grounded in real-world experience, our direct work with immigrants informs our broader policy and advocacy work. Our multicultural and multilingual staff works to foster alliances between immigrant and non-immigrant groups, including

³ An “age-out” is defined as a formerly unaccompanied minor who has turned 18 while in the custody of ORR, and then transferred into ICE custody.

government, civic, social and faith-based communities. Immigration activists, the national media and federal and state policy makers consider AI Justice one of the most effective organizations advocating for immigrant justice.

Disclosure of the Information Is in the Public Interest

With immigration reform once more on the horizon in Congress, immigration issues constitute a major segment of public discourse. Increasingly covered by media outlets, information regarding immigration matters is now more widely disseminated than ever before. Disclosure of the requested information will contribute significantly to the public understanding of operations within the ICE Miami Field Office as it relates to custody determinations of unaccompanied minors. The disclosed records will inform attorneys, advocates, members of the public and others concerned about detention conditions and immigrant rights. AI Justice has the capacity and intent to disseminate the requested information to the public. To this end, we will post relevant information on our website, draft analysis of the information obtained and disseminate it to the public, other immigration advocacy groups, stakeholders and potentially to members of Congress.

Disclosure of the Information Is Not Primarily in AI Justice's Commercial Interest

AI Justice is a 501(c)(3), tax-exempt, non-profit legal services organization that advocates for immigrant rights through direct representation, policy reform, impact litigation, and public education. Accordingly, AI Justice has no commercial interest that could be furthered by information responsive to a FOIA request. Immigration advocates, immigrants and other interested members of the public access information about DHS and ICE policies and practices on AI Justice's website. As previously stated, we seek the requested information for the purpose of disseminating it to the public and not for any commercial intent.

Please inform me in advance if the charges for this FOIA production will exceed \$50.00.

Thank you in advance for your response to this request within twenty working days, pursuant to FOIA requirements. *See* 5 U.S.C. § 552(a)(6)(A)(i). Should you have any questions or concerns, please feel free to contact me at (305) 573-1106 Ext. 1020, or via email at llehner@aijustice.org.

Sincerely,

Lisa Lehner
Senior Litigation Attorney
Americans for Immigrant Justice
6355 NW 36 Street, Suite 2201
Miami, FL 33166
305-573-1106, ext. 1020
llehner@aijustice.org

EXHIBIT

B

From: [Lisa Lehner](#)
To: [Lily Hartmann](#)
Subject: Fwd: ICE FOIA Request 2019-ICFO-28258
Date: Thursday, February 14, 2019 10:45:07 AM

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From: ice-foia@dhs.gov <ice-foia@dhs.gov>
Sent: Thursday, February 14, 2019 10:07:44 AM
To: Lisa Lehner
Subject: ICE FOIA Request 2019-ICFO-28258

February 14, 2019

Lisa Lehner
Americans for Immigrant Justice
3000 Biscayne Blvd., Ste. 400
Miami, FL 33137

RE: ICE FOIA Case Number 2019-ICFO-28258

Dear Ms. Lehner:

This acknowledges receipt of your January 09, 2019, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for seeking; any and all records authored, prepared, received, collected and/or maintained by or transmitted to/from DHS and/or ICE that describe, refer or relate ICE's documentation of its officers' considerations of the least restrictive setting for each age-out as required under 8 U.S. Code § 1232 (c)(2)(B). Records dated between October 1, 2018 and the present day - 1) All guidelines, directives, rules, policies, procedures, memoranda, reports, correspondence, communications or other documents that relate to the custody decisions pertaining to "age outs" subject to the 8 U.S. Code § 1232 (c)(2)(B) within the Miami Field Office area of jurisdiction from October 1, 2018 to present 2) All policies, memoranda, correspondence, and other documents related to an October 17, 2018 ICE policy requiring documentation of Title 8 U.S. Code § 1232 (c)(2)(B) decisions made by ICE regarding the manner of detention or release from detention of formerly unaccompanied minors who have turned 18 while in the custody of ORR, hereinafter referred to as "age-outs" 3) All documents uploaded since October 1, 2018 to a SharePoint page created for the purpose of documenting ICE officers' considerations of the less restrictive setting for each "age-out" within the Miami Field Office area of jurisdiction pursuant to Title 8 U.S.C. § 1232 (c)(2)(B) including the form in which age out custody decisions are made and documented 4) All guidelines, directives, rules, policies, procedures, memoranda, reports, correspondence, communications or other documents that relate to the number of age outs transferred from ORR custody to ICE detention facilities within the jurisdiction of the Miami Field Office of ICE from October 1, 2018 until the present. Your request was received in this office on January 28, 2019.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, ICE processes FOIA requests according to their order of receipt. Although ICE's goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10- day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, ICE will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to commercial requesters. As a commercial requester, you will be charged 10 cents per page for duplication, and for search and review time at the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher and reviewer. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

We have queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2019-ICFO-28258**. Please refer to this identifier in any future correspondence. To check the status of an ICE FOIA/PA request, please visit <http://www.dhs.gov/foia-status>. Please note that to check the status of a request, you must enter the 2019-ICFO-XXXXX tracking number. If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office. You may send an e-mail to foia@ice.dhs.gov, call toll free (866) 633-1182, or you may contact our FOIA Public Liaison, Fernando Pineiro, in the same manner. Additionally, you have a right to right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Regards,

ICE FOIA Office

Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009
Telephone: 1-866-633-1182
Visit our FOIA website at www.ice.gov/foia

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